

Federal Acquisition Regulation

22.406-2

as the estimated portion of the contract price that is labor unless the contracting officer determines, prior to issuance of the solicitation, that a different percentage is more appropriate for a particular contract or requirement. This percentage adjustment to the designated labor costs must be the only adjustment made to cover increases in wages and/or benefits resulting from the incorporation of a new or revised wage determination at the exercise of the option.

(4) The contracting officer may provide a computation method to adjust the contract price to reflect the contractor's actual increase or decrease in wages and fringe benefits (combined) to the extent that the increase is made to comply with, or the decrease is voluntarily made by the contractor as a result of incorporation of, a new or revised wage determination at the exercise of the option to extend the term of the contract. Generally, this method is appropriate for use only if contract requirements are predominately services subject to the Service Contract Act and the construction requirements are substantial and segregable. The methods used to adjust the contract price for the service requirements and the construction requirements would be similar.

[66 FR 53481, Oct. 22, 2001]

22.405 Labor standards for construction work performed under facilities contracts.

If it is not certain at the time of contract award that construction work may be required under a facilities contract (see 45.301), the clause at 52.222-17, Labor Standards for Construction Work—Facilities Contracts (see 22.407(c)) shall be included in the contract. When covered construction work is necessary after contract award, the contracting officer shall obtain the appropriate wage determination and incorporate it in the contract and identify the item or items of construction work to which the clauses apply.

22.406 Administration and enforcement.

22.406-1 Policy.

(a) *General.* Contracting agencies are responsible for ensuring the full and impartial enforcement of labor standards in the administration of construction contracts. Contracting agencies shall maintain an effective program that shall include—

(1) Ensuring that contractors and subcontractors are informed, before commencement of work, of their obligations under the labor standards clauses of the contract;

(2) Adequate payroll reviews, on-site inspections, and employee interviews to determine compliance by the contractor and subcontractors, and prompt initiation of corrective action when required;

(3) Prompt investigation and disposition of complaints; and

(4) Prompt submission of all reports required by this subpart.

(b) *Preconstruction letters and conferences.* Before construction begins, the contracting officer shall inform the contractor of the labor standards clauses and wage determination requirements of the contract and of the contractor's and any subcontractor's responsibilities under the contract. Unless it is clear that the contractor is fully aware of the requirements, the contracting officer shall issue an explanatory letter and/or arrange a conference with the contractor promptly after award of the contract.

22.406-2 Wages, fringe benefits, and overtime.

(a) In computing wages paid to a laborer or mechanic, the contractor may include only the following items:

(1) Amounts paid in cash to the laborer or mechanic, or deducted from payments under the conditions set forth in 29 CFR 3.5.

(2) Contributions (except those required by Federal, State, or local law) the contractor makes irrevocably to a trustee or a third party under any bona fide plan or program to provide for medical or hospital care, pensions, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance,

disability and sickness insurance, accident insurance, or any other bona fide fringe benefit.

(3) Other contributions or anticipated costs for bona fide fringe benefits to the extent expressly approved by the Secretary of Labor.

(b)(1) The contractor may satisfy the obligation under the clause at 52.222-6, Davis-Bacon Act, by providing wages consisting of any combination of contributions or costs as specified in paragraph (a) of this subsection, if the total cost of the combination is not less than the total of the basic hourly rate and fringe benefits payments prescribed in the wage determination for the classification of laborer or mechanic concerned.

(2) Wages provided by the contractor and fringe benefits payments required by the wage determination may include items that are not stated as exact cash amounts. In these cases, the hourly cash equivalent of the cost of these items shall be determined by dividing the employer's contributions or costs by the employee's hours worked during the period covered by the costs or contributions. For example, if a contractor pays a monthly health insurance premium of \$112 for a particular employee who worked 125 hours during the month, the hourly cash equivalent is determined by dividing \$112 by 125 hours, which equals \$0.90 per hour. Similarly, the calculation of hourly cash equivalent for nine paid holidays per year for an employee with an hourly rate of pay of \$5.00 is determined by multiplying \$5.00 by 72 (9 days at 8 hours each), and dividing the result of \$360 by the number of hours worked by the employee during the year. If the interested parties (contractor, contracting officer, and employees or their representative) cannot agree on the cash equivalent, the contracting officer shall submit the question for final determination to the Department of Labor as prescribed by agency procedures. The information submitted shall include—

(i) A comparison of the payments, contributions, or costs in the wage determination with those made or proposed as equivalents by the contractor; and

(ii) The comments and recommendations of the contracting officer.

(c) In computing required overtime payments, (i.e., 1½ times the basic hourly rate of pay) the contractor shall use the basic hourly rate of pay in the wage determination, or the basic hourly rate actually paid by the contractor, if higher. The basic rate of pay includes employee contributions to fringe benefits, but excludes the contractor's contributions, costs, or payment of cash equivalents for fringe benefits. Overtime shall not be computed on a rate lower than the basic hourly rate in the wage determination.

22.406-3 Additional classifications.

(a) If any laborer or mechanic is to be employed in a classification that is not listed in the wage determination applicable to the contract, the contracting officer, pursuant to the clause at 52.222-6, Davis-Bacon Act, shall require that the contractor submit to the contracting officer, Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, which, along with other pertinent data, contains the proposed additional classification and minimum wage rate including any fringe benefits payments.

(b) Upon receipt of SF 1444 from the contractor, the contracting officer shall review the request to determine whether it meets the following criteria:

(1) The classification is appropriate and the work to be performed by the classification is not performed by any classification contained in the applicable wage determination.

(2) The classification is utilized in the area by the construction industry.

(3) The proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage rates in the wage determination in the contract.

(c)(1) If the criteria in paragraph (b) of this section are met and the contractor and the laborers or mechanics to be employed in the additional classification (if known) or their representatives agree to the proposed additional classification, and the contracting officer approves, the contracting officer shall submit a report (including a copy of SF 1444) of that action to the Administrator, Wage and Hour Division, for approval, modification, or disapproval.